

Volume I  
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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
(EASTERN DIVISION)

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:  
M2 CONSULTING, INC., :  
Plaintiff, :  
:  
vs. : Civil Action  
:  
MRO SOFTWARE, INC., and CRAIG :  
NEWFIELD, :  
Defendants. :  
:  
- - - - -x

DEPOSITION OF THOMAS RICKEY BEVINGTON, a  
witness called on behalf of the Defendants, taken  
pursuant to the Federal Rules of Civil Procedure,  
before Linda A. Walsh, Registered Professional  
Reporter and Notary Public in and for the  
Commonwealth of Massachusetts, at the Offices of  
Gesmer Updegrove LLP, 40 Broad Street, Boston,  
Massachusetts, on Tuesday, July 26, 2005, commencing  
at 10:02 a.m.

PRESENT:

Fee, Rosse & Lanz, P.C.  
(By Mark S. Resnick, Esq.)  
321 Boston Post Road, Sudbury, MA 01776,  
for the Plaintiff.

Gesmer Updegrove LLP  
(By Lee T. Gesmer, Esq.,  
and Kurt Bratten, Esq.)  
40 Broad Street, Boston, MA 02109,  
for the Defendants.

\* \* \* \* \*

1 this document?

2 A. This is a document that we agreed at the  
3 outset of the relationship to -- we created the  
4 document. They had input into it, and it was the  
5 reporting tool for our hosting business: Who, how  
6 much, whether it was rental or existing, how much we  
7 owed MRO, et cetera, et cetera, et cetera.

8 Q. So this is a monthly activity report?

9 A. It's a monthly activity report.

10 Q. And your practice was to send it to MRO  
11 every month, correct?

12 A. Yes, we did.

13 Q. And you would send it for -- at the  
14 beginning of a month for the preceding month --

15 A. Yes.

16 Q. -- correct?

17 Now, this is the report for November 2002,  
18 the month the second hosting agreement was executed,  
19 correct?

20 A. Yes.

21 Q. And you did send this payment that's  
22 highlighted at the bottom of this document,  
23 \$5,785.50, you did send that to MRO, correct?

24 A. I think so, but you know, I couldn't swear

1 to it. We did send a payment of about that amount  
2 of money for the November period.

3 Q. Yes. Did you send any other commission  
4 payments to MRO for either the 20 percent  
5 customers -- customers who were covered by the 2000  
6 agreement which called for a 20 percent commission  
7 or the 50 percent customers after the payment based  
8 on the November 2002 activity report?

9 A. There never were any 50 percent customers.  
10 So there was no payments made for them. There may  
11 have been a \$1,300 payment or something done a  
12 couple of years or a year, year and a half earlier.  
13 The point is we were told all --

14 Q. All right. Let me just tell you, I don't  
15 want to mark these all in this deposition, but I'm  
16 sitting here looking at the activity reports month  
17 after month going forward from the one that you are  
18 holding in your hands, Exhibit 45, showing, you  
19 know, \$5,000, \$6,000 a month on average going up to  
20 \$7,000 or \$8,000 a month by the end of '03.

21 A. Uh-huh.

22 Q. Were these payments made to MRO?

23 A. We were never invoiced. We were told not  
24 to pay without an invoice. The only reason this

1 check was cut because I made a personal commitment  
2 to Ted Williams that this, quote, "wouldn't happen  
3 again."

4 Q. Who told you not to make any payments  
5 without an invoice.

6 A. Several people --

7 Q. Who were they?

8 A. -- for a long period of time. Ray Miciek,  
9 Bob Parker. They fully understood they weren't  
10 invoicing me. I created a problem for us. We would  
11 cut the checks initially back in '01. We would put  
12 them in the drawer since we are a small company and  
13 we can't afford a big hit, and they just couldn't  
14 get it together.

15 Q. So even though Exhibit 2, the 2002 hosting  
16 agreement, states in Exhibit A payment terms, net 30  
17 days from receipt of fees paid, even though it  
18 provides that in all the drafts going back, I'll  
19 represent to you, state essentially that same  
20 language, you believe that you didn't need to pay  
21 these monthly monies unless you were invoiced?

22 A. As a company we are not allowed to make  
23 payment without a request for payment. Are you with  
24 me?